

# APPENDIX IV

IF YOUR TRIBE HAS ESTABLISHED CODES AND ORDANCES GOVERNING THE DISPOSAL OF SOLID WASTE, THEY SHOULD BE REFERENCED IN THE CLEAN UP PLAN. GIVEN BELOW IS AN EXAMPLE JURISDICTION ESTABLISHING SUCH AUTHORITY.

## **SAMPLE JURISDICTION**

*(DERIVED FROM THE NAVAJO NATION)*

1. THE NATIVE AMERICAN TRIBAL COUNCIL IS THE GOVERNING BODY OF THE NATIVE AMERICAN TRIBE, PURSUANT TO NATIVE AMERICAN TRIBAL CODE '102 (A); AND
2. THE NATIVE AMERICAN TRIBAL COUNCIL IN 1972 RECOGNIZED THE NEED TO ESTABLISH WITHIN THE NATIVE AMERICAN TRIBAL GOVERNMENT, MECHANISMS TO PROTECT ENVIRONMENTAL QUALITY, AND TO ESTABLISHED THE NATIVE AMERICAN TRIBAL ENVIRONMENTAL COMMISSION BY RESOLUTION NAT-72-72 (SEPTEMBER 10, 1972), CODIFIED AS AMENDED AT 2 N.A.T.C. " 3402, ET SEQ., (1978) AND
3. THE ENACTMENT OF RESOLUTION NAT-72-72 CONSTITUTED FORMAL RECOGNITION BY THE NATIVE AMERICAN TRIBE OF THE INTIMATE RELATIONSHIP BETWEEN THE NATURAL ENVIRONMENT AND THE QUALITY OF LIFE OF HUMAN BEINGS. IN THE NATIVE AMERICAN WAY, SPIRITUAL, PHYSICAL AND MENTAL WELL-BEING IS ROOTED FUNDAMENTALLY IN NATURE. THE NATIVE AMERICAN CULTURE PROMOTES AND VALUES RESPECT FOR THE KNOWLEDGE OF THE HARMONIOUS, BALANCED AND SACRED INTERDEPENDENCE OF ALL ASPECTS OF LIFE ON THE EARTH. IN THE NATIVE AMERICAN WAY, THE EARTH IS OUR MOTHER, THE MOUNTAINS PART OF HER SACRED BODY, THE WATER COURSES HER VEINS AND ARTERIES. WHEN THE EARTH IS INJURED, THE RESULTANT INSTABILITY, IMBALANCE AND DISHARMONY BRING ILLNESS TO LIFE ON EARTH INCLUDING HUMAN KIND. HARMONY AND BALANCE ARE RESTORED THROUGH A RECOGNITION OF THE CONDITIONS THAT LED TO DISHARMONY AND BALANCE. THUS, THE INTEGRITY AND HEALTH OF THE NATIVE AMERICAN ENVIRONMENT ARE INTIMATELY RELATED TO THE HEALTH AND WELL-BEING OF PRESENT AND FUTURE GENERATIONS OF NATIVE AMERICAN PEOPLE. IT IS THE BIRTHRIGHT OF EVERY NATIVE AMERICAN TO ENJOY CLEAN AIR, CLEAN WATER, ABUNDANT SUNSHINE AND ALL THE GIFTS BESTOWED BY A CLEAN AND SAFE ENVIRONMENT; AND

4. **THE NATIVE AMERICAN TRIBE HAS GREATLY ENHANCED ITS CAPABILITIES TO PROTECT THE ENVIRONMENT AND HAS DRAMATICALLY INCREASED ITS GOVERNMENTAL AWARENESS OF, AND EXPERTISE REGARDING, ENVIRONMENTAL CONTAMINANTS IN ALL MEDIA (AIR, WATER, SOILS, ETC.) SINCE THE NATIVE AMERICAN TRIBAL COUNCIL CREATED THE NATIVE AMERICAN TRIBAL ENVIRONMENTAL PROTECTION COMMISSION IN 1972; AND**
5. **ADVANCES IN TECHNOLOGY AND CHANGES IN APPLICABLE LAW REQUIRE THAT THE NATIVE AMERICAN TRIBE FURTHER STRENGTHEN ITS EXECUTIVE AGENCY CHARGED WITH ENVIRONMENTAL PROTECTION; AND**
6. **BY RESOLUTION NAT-68-89 (NOVEMBER 15, 1989), THE NATIVE AMERICAN TRIBAL COUNCIL COMPREHENSIVELY AMENDED TITLE 2 OF THE NATIVE AMERICAN TRIBAL CODE FOR THE PURPOSE, AMONG OTHERS, OF PROVIDING FOR A SEPARATION OF POWERS OF THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE NATIVE AMERICAN TRIBE; AND**
7. **THE STRUCTURE AND PLAN OF OPERATION OF THE NATIVE AMERICAN TRIBAL ENVIRONMENTAL PROTECTION COMMISSION IS NO LONGER CONSISTENT WITH THE PHILOSOPHY OF THE NATIVE AMERICAN TRIBE, NOR IS IT ADEQUATE TO PROTECT THE QUALITY OF THE ENVIRONMENT OF THE NATIVE AMERICAN TRIBE; AND**
8. **THERE IS A NEED TO ESTABLISH THE "ENVIRONMENTAL PROTECTION AGENCY" AS AN INDEPENDENT REGULATORY AGENCY WITHIN THE EXECUTIVE BRANCH WITH REGULATORY, MONITORING AND ENFORCEMENT AUTHORITY OVER MATTERS RELATING TO THE QUALITY OF THE ENVIRONMENT OF THE NATIVE AMERICAN TRIBE, AND OVER ANY PERSON OR ENTITY, BROADLY DEFINED, DOING BUSINESS WITHIN, OR OTHERWISE AFFECTING THE ENVIRONMENT OF THE NATIVE AMERICAN TRIBE; AND**
9. **THE NATIVE AMERICAN TRIBAL COUNCIL HAS THE AUTHORITY AND THE RESPONSIBILITY FOR ESTABLISHING THE GENERAL POLICY OF THE NATIVE AMERICAN TRIBE'S GOVERNMENT WITH RESPECT TO ENVIRONMENTAL QUALITY, AND IT IS APPROPRIATE FOR THE NATIVE AMERICAN TRIBE TO ADOPT AN ENVIRONMENTAL POLICY ACT IN ORDER TO PROVIDE GUIDANCE AND DIRECTION FOR THE NATIVE AMERICAN TRIBES ENVIRONMENTAL PROTECTION AGENCY AND TO INFORM PERSONS AND ENTITIES RESIDING OR DOING BUSINESS WITHIN THE NATIVE AMERICAN TRIBE OF THAT PHILOSOPHY AND DIRECTION; AND**
10. **BY RESOLUTION NAT-38-94 THE GOVERNMENT SERVICES COMMITTEE OF THE NATIVE AMERICAN TRIBAL COUNCIL HAS APPROVED AND RECOMMENDED ENABLING LEGISLATION TO AMEND 2 N.A.T.C. '3402 ET SEQ., FOR THE PURPOSE OF ESTABLISHING THE ENVIRONMENTAL PROTECTION AGENCY; AND**

11. BY RESOLUTION NAT-073-94 THE RESOURCES COMMITTEE OF THE NATIVE AMERICAN TRIBAL COUNCIL HAS RECOMMENDED AMENDING NAT-72-72 (AS AMENDED BY RESOLUTION NAT-94-76) FOR THE PURPOSES OF ESTABLISHING THE ENVIRONMENTAL PROTECTION AGENCY AND THE ADOPTION OF THE NATIVE AMERICAN TRIBES ENVIRONMENTAL POLICY ACT; AND
12. BY RESOLUTION NAT-50-94 THE GOVERNMENT SERVICES COMMITTEE OF THE NATIVE AMERICAN TRIBAL COUNCIL HAS APPROVED THE PLAN OF OPERATION OF THE NATIVE AMERICAN TRIBAL ENVIRONMENTAL PROTECTION AGENCY.

THIS RESOLUTION WAS APPROVED BY THE NATIVE AMERICAN TRIBAL COUNCIL ON THE 21ST DAY OF MAY, 1995.

BELOW ARE QUOTED PORTIONS OF EXHIBIT A TO THE ABOVE RESOLUTION:

**SUBCHAPTER 93. ENVIRONMENTAL PROTECTION AGENCY ' 3403. AUTHORITY**

IN IMPLEMENTING THE PURPOSES OF THE ENVIRONMENTAL PROTECTION AGENCY, THE DIRECTOR SHALL HAVE THE POWER:

A. TO ADOPT (GIVE FINAL APPROVAL) AND ENFORCE RULES, PROVIDED THAT THESE RULES SHALL BE ADOPTED ONLY AFTER NOTICE AND COMMENT, PURSUANT TO RULES PROMULGATED BY THE DIRECTOR AND APPROVAL OF THE RESOURCES COMMITTEE OF THE NATIVE AMERICAN TRIBE;

B. TO ISSUE CEASE AND DESIST ORDERS, COMPLIANCE ORDERS OR SUCH OTHER ORDERS AS THE DIRECTOR SHALL DEEM NECESSARY TO ENFORCE ENVIRONMENTAL PROTECTION AGENCY REGULATIONS TO PROHIBIT OR PUT TO A STOP ACTIVITIES THAT MAY POSE AN IMMINENT AND SUBSTANTIAL DANGER TO THE PUBLIC HEALTH OR THE ENVIRONMENT;

C. TO IMPLEMENT BY REGULATION, RULES FOR ADMINISTRATIVE APPEAL OF ANY ADVERSE ACTION TAKEN BY NATIVE AMERICAN TRIBAL ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO THE AUTHORITY OF THIS SECTION AND TO ISSUE FINAL AGENCY DECISIONS.

D. TO LEVY CIVIL PENALTIES FOR EACH DAY OF VIOLATION OF ANY ORDER ISSUED BY THE DIRECTOR; PROVIDED, HOWEVER, THAT ANY PERSON OR ENTITY AS DEFINED IN 2 N.A.T.C. ' 3305 SHALL HAVE THE RIGHT TO APPEAL ANY CIVIL PENALTY TO THE COURTS OF THE NATIVE AMERICAN TRIBE AS SPECIFICALLY PROVIDED IN THE CHAPTERS ADMINISTERED BY THE NATIVE AMERICAN TRIBAL ENVIRONMENTAL

**PROTECTION AGENCY. NO APPEAL SHALL OPERATE TO STAY AN ORDER UNLESS THE COURT DETERMINES, AFTER A HEARING, THAT THERE IS NO BASIS IN FACT TO SUPPORT THE ORDER OR THAT THE ORDER IS NOT IN COMPLIANCE WITH APPLICABLE LAW;**

**E. TO TAKE SUCH ACTIONS AS MAY BE NECESSARY OR APPROPRIATE TO IMPLEMENT THE PURPOSES OF THE ENVIRONMENTAL PROTECTION AGENCY;**

**F. TO CARRY OUT ANY OTHER POWERS CONSISTENT WITH THE PURPOSES OF THE ENVIRONMENTAL PROTECTION AGENCY THAT MAY BE AUTHORIZED IN ITS PLAN OF OPERATION UPON RECOMMENDATION OF THE RESOURCES COMMITTEE AND APPROVAL OF THE GOVERNMENT SERVICES COMMITTEE.**

### **3405. JURISDICTION**

**THE NATIVE AMERICAN TRIBAL ENVIRONMENTAL PROTECTION AGENCY HAS REGULATORY, MONITORING, AND ENFORCEMENT AUTHORITY OVER ALL NATURAL RESOURCES RELATING TO THE QUALITY OF THE ENVIRONMENT WITHIN THE NATIVE AMERICAN TRIBE, AS DEFINED IN N.A.T.C. ' 254, AND OVER ANY PERSON, INCLUDING BUT NOT LIMITED TO NATIVE AMERICAN CITIZENS, ENTERPRISES, CORPORATIONS, ASSOCIATIONS, PARTNERSHIPS, CHAPTERS, TRIBAL GOVERNMENTS OR OTHER ENTITIES; NON-NATIVE AMERICAN TRIBE INDIVIDUALS, CORPORATIONS, ASSOCIATIONS, PARTNERSHIPS, OTHER ENTITIES, SUCCESSORS AND ASSIGNS; STATES, COUNTIES, LOCAL GOVERNMENTS AND OTHER AGENCIES; AND THE UNITED STATES WHERE NOT PROHIBITED BY APPLICABLE LAWS, DOING BUSINESS WITHIN OR OTHERWISE AFFECTING THE ENVIRONMENT OF THE NATIVE AMERICAN TRIBE.**